In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-991

JACK MILLER, A/K/A CHARLES MULLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Following a bench trial in the United States District Court for the Eastern District of Pennsylvania, petitioner, the secretary-treasurer of a Teamsters Union local, was convicted of having obtained money from an employer during the course of union contract negotiations, in violation of 29 U.S.C. 186(b), and of conspiring to commit that offense, in violation of 18 U.S.C. 371. He was sentenced to imprisonment for each and every weekend for a period of three months, fined $1500, and placed on probation for five years. The court of appeals affirmed (Pet. App.)[1]. Petitioner contends here, as he did below, that the evidence was insufficient to support his conviction.

[1] See also *Miller* v. *United States*, No. 72-736, pending on petition for a writ of certiorari, in which petitioner seeks review of his conviction for embezzling union funds.

The evidence adduced at trial showed that on six occasions between December 1965 and October 1969, petitioner and co-defendant Raymond Oates, acting on behalf of Local 158, negotiated contracts with the management of H-P Tool Manufacturing Company; at petitioner's suggestion, this company paid them various sums of money to obtain favorable contract terms (A. 8-29).[2]

The government's chief witness was Preston Komins, the president of H-P Tool during the period covered by the indictment. Komins testified that he had initially contacted petitioner and Oates in an effort to settle a labor dispute between his company and Local 158; he subsequently met with them at a union hall in the Richmond section of Philadelphia (A. 11-13).[3] Komins explained that the demands of the union were greater than his company could afford and, in the course of the conversation, Komins "offered a gift, or whatever you want to call it" to obtain more favorable demands (A. 14). Petitioner and Oates agreed to reduce the union's demands in return for annual payments of $250 each (A. 15). The demands were lowered, and the payments were made, in cash, by Komins personally to petitioner and co-defendant Oates in December 1965 and 1966 (A. 15-19). Komins made the payments in the Christmas season, when sums of cash were available for use as business gifts and "so that

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[2] "A." refers to petitioner's appendix in the court of appeals. "Tr." refers to the transcript at trial.

[3] On direct examination, Komins stated that his initial meeting with Oates and petitioner took place shortly after his plant was organized by Local 158, placing that date during the month of October 1965 (A. 10-13). However, during cross-examination the defense introduced exhibits which showed that H-P Tool was actually organized in 1962 and the first contract negotiated at that time (A. 33-34, 38-39).

it would be less obvious when money was withdrawn from the Company" (A. 15). The secretary-treasurer of H-P Tool testified that during the Christmas season in 1965 and 1966 he gave Komins sums of money in cash or checks without knowing the purpose for which the money was to be used (A. 97).

In 1967, H-P Tool sought to have the bi-annual contract with Local 158 changed to a three-year agreement (A. 21-22, 97-99). Komins and the secretary-treasurer of the company met with petitioner and Oates in a Philadelphia restaurant to negotiate the new agreement (A. 22, 97-98). During this luncheon meeting, Komins and petitioner left the dining area and entered into a private discussion (A. 23, 98). In exchange for the requested concession, petitioner requested that the annual payments be increased from $250 to $500 each (A. 23). Thereafter, the company and union entered into a three year contract and the increased payments were made by Komins in two cash installments—$250 each during the months December and January (A. 23-25). The final payment was made in January 1969 (A. 25).[4]

1. While acknowledging that this Court as well as the courts of appeals have recognized that the uncorroborated testimony of an accomplice alone is sufficient to sustain

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[4] In October 1969, Preston Komins appeared before the Grand Jury and was questioned regarding the payments made to petitioner and Oates (A. 25). Komins initially invoked the Fifth Amendment, and later denied any knowledge of the payoffs (A. 26). He was then indicted for perjury. After consultations with his attorney prior to trial for perjury, Komins decided to "tell the truth" (A. 27). In late December 1969, Komins gave statements to the F.B.I. and before the United States Commissioner, detailing the payments he made to petitioner and Oates (A. 27-28). His indictment was subsequently dismissed (A. 29).

a conviction, petitioner argues that this rule should be re-examined. But the continued need for the rule is evidenced by this case, where in the nature of things the transactions do not lend themselves to ready corroboration. As Komins testified, the agreement was solely between himself and petitioner. In any event, as noted above, Komins' testimony was corroborated with respect to a number of crucial details concerning his transactions with petitioner and Oates, such as the 1967 meeting for negotiation of a three-year agreement.

2. Petitioner further contends that the evidence is insufficient to sustain the conviction because Komins' testimony was allegedly insubstantial and incredible. Petitioner bases this argument primarily upon the fact that Komins was uncertain about some of the details of his union contracts and his dealings with petitioner. However, Komins was unequivocal and uncontradicted in his testimony that he had paid specific sums of money to petitioner and Oates over a four year period in order to secure favorable demands from the union which they represented, and the cross-examination of this witness was extremely thorough and complete (A. 29-77). Moreover, during closing argument petitioner's counsel specifically brought the uncertain aspects of Komins' testimony to the attention of the trial judge as finder-of-fact (Tr. 149-156). In these circumstances, the ultimate determination of the credibility of the witness was properly left to the trier of fact who, in the instant case, resolved the issue against petitioner.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1973.